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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,288	10/24/2001	Stephen C. Edberg	14098/1013B	3574

29933 7590 04/15/2003

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EXAMINER

GITOMER, RALPH J

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 04/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/036,288

Applicant(s)
Edberg

Examiner
Ralph Gitomer

Art Unit
1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 26, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12 6) ☐ Other:

The amendment and IDS received 2/26/2003 have been entered and claims 1-33 are currently pending in this application. The amended title and abstract are acceptable. Priority is granted
5 to 6/30/1986.

The rejections of record under 35 USC 112, first and second paragraphs, are hereby withdrawn.

The nonstatutory double patenting rejection is based on a
10 judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.
15 Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR
20 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-33 are rejected under the judicially created
5 doctrine of obviousness-type double patenting as being
unpatentable over claims 11-14 of U.S. Patent No. 4,925,789.
Although the conflicting claims are not identical, they are not
patentably distinct from each other because the present claims
are broader than those of `789 and encompass all the features of
10 the claims of `789.

The following prior art pertinent to applicant's disclosure
is made of record and not relied upon:
Cenci (Microbiologica) teaches detecting coliforms.

15 Any inquiry concerning this communication or earlier
communications from the examiner should be directed to Ralph
Gitomer whose telephone number is (703) 308-0732. The examiner
can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm.
20 The examiner can also be reached on alternate Mondays. If
attempts to reach the examiner by telephone are unsuccessful, the
examiner's supervisor, Michael Wityshyn can be reached on (703)
308-4743. The fax phone number for this Art Unit is (703) 308-
4556. Any inquiry of a general nature or relating to the status
25 of this application should be directed to the Group receptionist

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whose telephone number is (703) 308-1235. For 24 hour access to
patent application information 7 days per week, or for filing
applications electronically, please visit our website at
www.uspto.gov and click on the button Patent Electronic Business
Center for more information.

Ralph Gitomer

Ralph Gitomer
Primary Examiner
Group 1651

RALPH GITOMER
PRIMARY EXAMINER
GROUP 1200